



**KNUTSON, FLYNN & DEANS, P.A.,
1155 Centre Point Drive, Suite 10
Mendota Heights, MN 55120
651-222-2811**

Minnesota Administrators for Special Education

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**Recent Changes to Minnesota Special Education Laws and How
They Work - A View from Inside the Minnesota Legislature**

*by Peter A. Martin
Knutson, Flynn & Deans, P.A.
651-225-0625*

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KNUTSON FLYNN & DEANS P.A.

1155 Centre Pointe Drive,
Suite 10

Mendota Heights, MN 55120

651.222.2811

pmartin@kfdmn.com

www.kfdmn.com

CHANGES TO THE PUPIL FAIR DISMISSAL ACT

A. *Minn. Stat. § 121A.41, subd. 7 – Definition of Pupil*

Subd. 7. **Pupil.** (a) “Pupil” means any student:

- (1) without a disability under 21 years of age; or
 - (2) with a disability ~~until September 1 after the child with a disability becomes 22 years of age~~ **under 21 years old who has not received a regular high school diploma or for a child with a disability who becomes 21 years old during the school year but has not received a regular high school diploma, until the end of that school year; and**
 - (3) ~~and~~ who remains eligible to attend a public elementary or secondary school.
- (b) **A “student with a disability” or a “pupil with a disability” has the same meaning as a “child with a disability” under section 125A.02.**

B. *Minn. Stat. § 121A.41, subd. 10 – Definition of Suspension*

Subd. 10. **Suspension.** “Suspension” means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension. This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability.... ~~In the case of a student with a disability, the student's individual education plan team must meet immediately but not more than ten school days after the date on which the decision to remove the student from the student's current education placement is made. The~~

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~~individual education plan team and other qualified personnel shall at that meeting: conduct a review of the relationship between the child's disability and the behavior subject to disciplinary action; and determine the appropriateness of the child's education plan.~~

- ~~(1) the parent requests a meeting;~~
- ~~(2) the student is removed from the student's current placement for five or more consecutive days; or~~
- ~~(3) the student's total days of removal from the student's placement during the school year exceed ten cumulative days in a school year. The school administration shall implement alternative educational services when the suspension exceeds five days. A separate administrative conference is required for each period of suspension.~~

C. *Minn. Stat. § 121A.43 – Exclusion and Expulsion of Pupils with a Disability*

- (a) Consistent with federal law governing days of removal and section 121A.46, school personnel may suspend a child with a disability. When a child with a disability has been suspended for more than five consecutive school days or 10 cumulative school days in the same school year, and that suspension does not involve a recommendation for expulsion or exclusion or other change of placement under federal law, relevant members of the child's individualized education program team, including at least one of the child's teachers, shall meet and determine the extent to which the child needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child's individualized education program. That meeting must occur as soon as possible, but no more than 10 days**

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after the sixth consecutive day of suspension or the tenth cumulative day of suspension has elapsed.

- (b) A dismissal for one school day or less is a day or a partial day of suspension if the child with a disability does not receive regular or special education instruction during that dismissal period. The notice requirements under section 121A.46 do not apply to a dismissal of one day or less.
- (c) A child with a disability shall be provided alternative educational services to the extent a suspension exceeds five consecutive school days.
- (d) Before initiating an expulsion or exclusion under sections 121A.40 to 121A.56, the district, relevant members of the child's individualized education program team, and the child's parent shall, consistent with federal law, determine whether the child's behavior was caused by or had a direct and substantial relationship to the child's disability and whether the child's conduct was a direct result of a failure to implement the child's individualized education program.
~~When a pupil~~ child with a disability who has an individual individualized education plan program is excluded or expelled under sections 121A.40 to 121A.56 for misbehavior that is not a manifestation of the pupil's child's disability, the district shall continue to provide special education and related services ~~after a period of suspension, if suspension is imposed. The district shall initiate a review of the pupil's individual education plan and conduct a review of the relationship between the pupil's disability and the behavior subject to disciplinary action and determine the appropriateness of the pupil's education plan before commencing an expulsion~~

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~~or exclusion~~ during the exclusion or expulsion.

CHANGES TO STATE SPECIAL EDUCATION STATUTES

A. *Minn. Stat. 125A.02 – Child with a Disability Defined*

Subdivision 1. **Child with a disability.** ~~Every child who has~~ “Child with a disability” means a child identified under federal and state special education law as **having** a hearing impairment, blindness, visual disability, speech or language impairment, physical disability, other health impairment, mental disability, emotional/behavioral disorder, specific learning disability, autism, traumatic brain injury, multiple disabilities, or ~~leaf/blind~~ **deafblind** disability ~~and who~~ **needs special instruction and education and related services, as determined by the standards **rules** of the commissioner, is a child with a disability.** A licensed physician, an advanced practice nurse, or a licensed psychologist is qualified to make a diagnosis and determination of attention deficit disorder or attention deficit hyperactivity disorder for purposes of identifying a child with a disability.

Subd. 1a. **Children ages three through seven experiencing developmental delays.** In addition, every child under age three, and at local district discretion from age three to age seven, who needs special instruction and services, as determined by the ~~standards~~ **rules** of the commissioner, because the child has a substantial delay or has an identifiable physical or mental condition known to hinder normal development is a child with a disability.

Subd. 2. **Not a child with a disability.** A child with a short-term or temporary physical or emotional illness or disability, as determined by the ~~standards~~ **rules** of the commissioner, is not a child with a disability.

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B. Minn. Stat. § 125.07 - Rulemaking

125A.07 RULES OF COMMISSIONER RULEMAKING.

- (a) ~~As defined in Consistent with this paragraph section, the commissioner ~~must~~ shall adopt new rules and amend existing rules relative to qualifications of essential personnel, courses of study, methods of instruction, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation, and other necessary rules for instruction of children with a disability. These rules must provide standards and procedures appropriate for the implementation of and within the limitations of sections 125A.08 and 125A.091. These rules must also provide standards for the discipline, control, management, and protection of children with a disability. The commissioner must not adopt rules for pupils served primarily in the regular classroom establishing either case loads or the maximum number of pupils that may be assigned to special education teachers. The commissioner, in consultation with the Departments of Health and Human Services, must adopt permanent rules for instruction and services for children under age five and their families. These rules are binding on state and local education, health, and human services agencies. The commissioner must adopt rules to determine eligibility for special education services. The rules must include procedures and standards by which to grant variances for experimental eligibility criteria. The commissioner must, according to section 14.05, subdivision 4, notify a district applying for a variance from the rules within 45 calendar days of receiving the request whether the request for the variance has been granted or denied. If a request is denied, the commissioner must specify the program standards used to evaluate the request and the reasons for denying the request~~

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related to children with disabilities only under specific authority and consistent with the requirements of chapter 14 and paragraph (c)....

- (c) Subject to chapter 14, the commissioner may adopt, amend, or rescind a rule related to children with disabilities if such action is specifically required by federal law.**

C. Minn. Stat. § 125A.08 – Individualized Education Programs

125A.08 SCHOOL DISTRICT OBLIGATIONS INDIVIDUALIZED EDUCATION PROGRAMS.

- (a) At the beginning of each school year, each school district shall have in effect, for each child with a disability, an individualized education program.**

- (b)** As defined in this section, every district must ensure the following:

- (1)** ...The individual education plan team must consider positive behavioral interventions, strategies, and supports that address behavior for children with attention deficit disorder or attention deficit hyperactivity disorder. ~~By~~ **During** grade 9 ~~or age 14~~, the plan must address the student's needs for transition from secondary services to postsecondary education and training, employment, community participation, recreation, and leisure and home living. In developing the plan, districts must inform parents of the full range of transitional goals and related services that should be considered. The plan must include a statement of the needed transition services, including a statement of the interagency responsibilities or linkages or both before secondary services are concluded;

[Remaining portion of statute omitted].

D. Minn. Stat. § 125A.091 – Alternative Dispute

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Resolution and Due Process Hearings

~~Subdivision 1. **District obligation.** A school district must use the procedures in federal law and state law and rule to reach decisions about the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability.~~

~~Subd. 2. **Prior written notice.** A parent must receive prior written notice a reasonable time before the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education to a child with a disability.~~

~~Subd. 3. **Content of notice.** The notice under subdivision 2 must:~~

- ~~(1) describe the action the district proposes or refuses;~~
- ~~(2) explain why the district proposes or refuses to take the action;~~
- ~~(3) describe any other option the district considered and the reason why it rejected the option;~~
- ~~(4) describe each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action;~~
- ~~(5) describe any other factor affecting the proposal or refusal of the district to take the action;~~
- ~~(6) state that the parent of a child with a disability is protected by procedural safeguards and, if this notice is not an initial referral for evaluation, how a parent can get a description of the procedural safeguards; and~~

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~~(7) identify where a parent can get help in understanding this law.~~

Subd. 3a. **Additional requirements for prior written notice.** In addition to federal law requirements, a prior written notice shall:

- (1) inform the parent that except for the initial placement of a child in special education, the school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent; and**
- (2) state that a parent who objects to a proposal or refusal in the prior written notice may request a conciliation conference under subdivision 7 or another alternative dispute resolution procedure under subdivision 8 or 9.**

~~Subd. 4. **Understandable notice.** (a) The written notice under subdivision 2 must be understandable to the general public and available in the parent's native language or by another communication form, unless it is clearly not feasible to do so.~~

~~(b) If the parent's native language or other communication form is not written, the district must take steps to ensure that:~~

- ~~(1) the notice is translated orally or by other means to the parent in the parent's native language or other communication form;~~
- ~~(2) the parent understands the notice; and~~
- ~~(3) written evidence indicates the requirements in subdivision 2 are met.~~

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Subd. 7. **Conciliation conference.** A parent must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives notice under subdivision 2.3a. ~~If the parent refuses district efforts to conciliate the dispute, the conciliation requirement is satisfied.~~ Following a conciliation conference **A district must hold a conciliation conference within ten calendar days from the date the district receives a parent's objection to a proposal or refusal in the prior written notice. Except as provided in this section, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five school days after the final conciliation conference,** the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding.

Subd. 9. **Mediation.** Mediation is a dispute resolution process that involves a neutral party provided by the state to assist a parent and a district in resolving disputes over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. A mediation process is available as an informal alternative to a due process hearing but must not be used to deny or postpone the opportunity of a parent or district to obtain a due process hearing. Mediation is voluntary for all parties. All mediation discussions are confidential and inadmissible in evidence in any subsequent proceeding, unless the:

- (1) parties expressly agree otherwise;
- (2) evidence is otherwise available; or
- (3) evidence is offered to prove bias or prejudice of

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a witness.

Subd. 10. **Mediated agreements.** ~~Mediated agreements are not admissible unless the parties agree otherwise or a party to the agreement believes the agreement is not being implemented, in which case the aggrieved party may enter the agreement into evidence at a due process hearing. The parties may request another mediation to resolve a dispute over implementing the mediated agreement. After a due process hearing is requested, a party may request mediation and the commissioner must provide a mediator who conducts a mediation session no later than the third business day after the mediation request is made to the commissioner.~~ **If the parties resolve all or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is in writing and signed by the parties and each party is given a copy of the document. The written resolution or agreement shall state that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The resolution or agreement is legally binding upon the parties and is enforceable in the state or federal district court. A party may request another mediation to resolve a dispute over implementing the mediated agreement.**

Subd. 12. **Impartial due process hearing.** ~~(a)~~ A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. The hearing must be held in the district responsible for ensuring that a free appropriate public education is provided according to state and federal law. The proceedings must be recorded and preserved, at state expense, pending ultimate disposition of the action. **The parent and the district shall receive, at state expense, a copy of the hearing transcript or recording and the hearing officer's findings of fact,**

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conclusion of law, and decisions.

~~(b) The due process hearing must be conducted according to the rules of the commissioner and federal law.~~

Subd. 13. **Hearing officer qualifications.** ~~The commissioner must appoint an individual who is qualified under this subdivision to serve as a hearing officer. The commissioner shall maintain a list of qualified hearing officers. The list shall include a statement of the qualifications of each person listed. Upon receipt of a written request for a hearing, the commissioner shall appoint a hearing officer from the list. The hearing officer must...:~~

(8) not be a current employee or board member of a disability advocacy organization or group;

(9) not otherwise be under contract with the department or the school district;

(10) know and understand state and federal special education laws, rules, and regulations, and legal interpretations by federal and state courts; and

(11) have the knowledge and ability to conduct hearings and render and write decisions according to appropriate, standard legal practice.

Subd. 14. **Request for hearing.** ~~A request for a due process hearing must:~~

~~(1) be in writing;~~

~~(2) describe the nature of the dispute about providing special education services to the student including facts relating to the dispute; and~~

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(3) — state, to the extent known, the relief sought.

~~Any school district administrator receiving a request for a due process hearing must immediately forward the request to the commissioner. Within two business days of receiving a request for a due process hearing, the commissioner must appoint a hearing officer. The commissioner must not deny a request for hearing because the request is incomplete. A party may disqualify a hearing officer only by affirmatively showing prejudice or bias to the commissioner or to the chief administrative law judge if the hearing officer is an administrative law judge. If a party affirmatively shows prejudice against a hearing officer, the commissioner must assign another hearing officer to hear the matter.~~

- (a) A parent or a school district may file a written request for a due process hearing regarding a proposal or refusal to initiate or change that child's evaluation, individualized education program, or educational placement, or to provide a free appropriate public education.
- (b) The parent shall include in the hearing request the name of the child, the address of the child's residence, the name of the school the child attends, a description of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.
- (c) A parent or a school district may file a written request for a hearing under United States Code, title 20, section 1415, paragraph (k).
- (d) A parent or school district filing a request for a hearing under this subdivision must provide the request to the other party and a copy of

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the request to the department.

Upon receiving a request for a hearing, the department shall give to the child's parent a copy of the procedural safeguards notice available to a parent under federal regulations.

(e)(1) If the parent of a child with a disability files a written request for a hearing, and the school district has not previously sent a written notice to the parent under subdivision 3a, regarding the subject matter of the hearing request, the school district shall, within ten days of receiving the hearing request, send to the child's parent a written explanation of why the school district proposed or refused to take the action raised in the hearing request. The explanation must include a description of other options that the individualized education program team considered and the reason why those options were rejected; a description of each evaluation procedure, assessment, record, or report that the school district used as the basis for the proposed or refused action; and a description of the factors that are relevant to the school district's proposal or refusal. A response by a school district under this subdivision does not preclude the school district from asserting that the parent's request for a hearing is insufficient under clause (2) of this paragraph; and

(2) a hearing may not occur until the party requesting the hearing files a request that meets the requirements of paragraph (b). The request under paragraph (b) is considered sufficient unless the party receiving the request notifies the hearing officer and the other party in writing within 15 days of receiving the request that the receiving party believes the request does not meet the requirements of paragraph (b). Within five

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days of receiving a notice under this subdivision, the hearing officer shall determine whether the request meets the requirements under paragraph (b) and notify the parties.

- (f) Except as provided in paragraph (e), clause (1), the party receiving a request for a hearing shall send to the party requesting the hearing a written response that addresses the issues raised in the hearing request within ten days of receiving the request.**

Subd. 16. **Burden of proof.** The burden of proof at a due process hearing is on the district to ~~demonstrate, by a preponderance of the evidence, that it is complying with the law and offered or provided a free appropriate public education to the child in the least restrictive environment.~~ If the district has not offered or provided a free appropriate public education in the least restrictive environment and the parent wants the district to pay for a private placement, the burden of proof is on the parent to demonstrate, by a preponderance of the evidence, that the private placement is appropriate **party seeking relief.**

Subd. 18. **Hearing officer authority.** (a) A hearing officer must limit an impartial due process hearing to the time sufficient for each party to present its case.

- (b) A hearing officer must establish and maintain control and manage the hearing. This authority includes, but is not limited to...:
- (6) ordering an independent educational evaluation of a child at district expense; and
- (7) extending the hearing decision timeline if the hearing officer determines that good cause exists.**
- (c) Good cause includes, but is not limited to, the time required for mediation or other settlement discussions, independent**

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educational evaluation, complexity and volume of issues, or finding or changing counsel.

Subd. 19. **Expedited due process hearings. Consistent with federal law, a parent has the right to or a school district may file a written request for an expedited due process hearing when there is a dispute over a manifestation determination or a proposed or actual placement in an interim alternative educational setting. A district has the right to an expedited due process hearing when proposing or seeking to maintain placement in an interim alternative educational setting. A hearing officer must hold an expedited due process hearing within 20 school days of the date the expedited due process request is filed and must issue a decision within ten calendar school days of after the request for a hearing. A hearing officer may extend by up to five additional calendar days the time for issuing a decision in an expedited due process hearing. All policies in this section apply to expedited due process hearings to the extent they do not conflict with federal law. A resolution meeting must occur within seven days of receiving the request for an expedited due process hearing unless the parent and the school district agree in writing either to waive the resolution meeting or use the mediation process. The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receiving the expedited due process hearing request.**

Subd. 20. **Hearing officer's decision; time period.**
(a) **The hearing officer must issue a decision within 45 calendar days of the date on which the commissioner receives the request for a due process hearing ensure that not later than 45 days after the 30-day period or the adjusted time periods under federal regulations expire, the hearing officer reaches a final decision in the due process hearing and transmits a copy of the decision to each party. A hearing officer, at the request of either party, may grant specific extensions of time beyond the 45-day period under subdivision**

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18. The hearing officer must conduct the oral arguments in a hearing at a time and place that is reasonably convenient to the parents and child involved. A hearing officer is encouraged to accelerate the time line to 30 days for a child under the age of three whose needs change rapidly and who requires quick resolution of a dispute. ~~A hearing officer may not extend the time beyond the 45-day period unless requested by either party for good cause shown on the record. Extensions of time must not exceed a total of 30 calendar days unless both parties and the hearing officer agree or time is needed to complete an independent educational evaluation. Good cause includes, but is not limited to, the time required for mediation or other settlement discussions, independent educational evaluation, complexity and volume of issues, or finding or changing counsel.~~

(b) ~~The hearing officer's decision must:~~ **Once the hearing officer has issued a final decision, the hearing officer lacks authority to amend the decision except for clerical or mathematical errors.**

(c) **Nothing in this subdivision precludes a hearing officer from ordering a school district to comply with federal procedural safeguards under the federal Individuals with Disabilities Education Act.**

(1) ~~be in writing;~~

(2) ~~state the controlling and material facts upon which the decision is made in order to apprise the reader of the basis and reason for the decision; and~~

(3) ~~be based on local standards, state statute, the rules of the commissioner, and federal law.~~

Subd. 22. Child's educational placement during due process hearing. (a) ~~Until a due process hearing under this section is completed or the district and the parent agree otherwise, the child must remain in the child's~~

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~~current educational placement and must not be denied initial admission to school.~~

~~(b) — Until an expedited due process hearing challenging an interim alternative educational placement is completed, the child must remain in the interim alternative educational setting until the decision of the hearing officer or the expiration of the 45 days permitted for an interim alternative educational setting, whichever occurs first, unless the parent and district agree otherwise.~~

~~Subd. 23. **Implementation of hearing officer order.**~~

~~(a) That portion of a hearing officer's decision granting relief requested by the parent must be implemented upon issuance.~~

~~(b) — Except as provided under paragraph (a) or the district and parent agree otherwise, following a hearing officer's decision granting relief requested by the district, the child must remain in the current educational placement until the time to request judicial review under subdivision 24 expires or, if judicial review is requested, at the time the Minnesota Court of Appeals or the federal district court issues its decision, whichever is later.~~

Subd. 24. **Review of hearing officer decisions.** The parent or district may seek review of the hearing officer's decision in the Minnesota Court of Appeals or in the federal district court, ~~consistent with federal law.~~ A party must appeal to the Minnesota Court of Appeals within 60 days of receiving the hearing officer's decision or must appeal to federal district court within 90 days of receiving the hearing officer's decision.

Subd. 25. **Enforcement of orders.** The commissioner

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must monitor final hearing officer decisions and ensure enforcement of hearing officer ~~orders~~ **decisions**.

Subd. 27. **Hearing officer training.** A hearing officer must participate in training and ~~follow procedures established~~ **offered** by the commissioner.

Subd. 28. **District liability.** A district is not liable for harmless technical violations of ~~this section or rules implementing this section~~ **federal or state laws, rules, or regulations governing special education** if the school district can demonstrate ~~on a case-by-case basis~~ that the violations did not harm a student's educational progress or the parent's right to notice, participation, or due process. **This subdivision is applicable to due process hearings and special education complaints filed with the department.**

E. Minn. Stat. § 125A.15 – Placement in Another District; Responsibility

The responsibility for special instruction and services for a child with a disability temporarily placed in another district for care and treatment shall be determined in the following manner:

- (a) The district of residence of a child shall be the district in which the child's parent resides, if living, or the child's guardian, or the district designated by the commissioner if neither parent nor guardian is living within the state.
- (b) **If a district other than the resident district places a pupil for care and treatment, the district placing the pupil must notify and give the resident district an opportunity to participate in the placement decision. When an immediate emergency placement of a pupil is necessary and time constraints foreclose a resident district from participating in the emergency placement decision, the district in which the pupil is temporarily placed must notify the resident district of the emergency placement within 15 days. The resident**

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district has up to five business days after receiving notice of the emergency placement to request an opportunity to participate in the placement decision, which the placing district must then provide.

- (c) When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence during the care and treatment, the district of residence is responsible for providing transportation to and from the care and treatment ~~facility~~ program and an appropriate educational program for the child. **The resident district may establish reasonable restrictions on transportation, except if a Minnesota court or agency orders the child placed at a day care and treatment program and the resident district receives a copy of the order, then the resident district must provide transportation to and from the program unless the court or agency orders otherwise.** Transportation shall only be provided by the **resident** district during regular operating hours of the **resident** district. The **resident** district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district....

F. Minn. Stat. § 125A.51 – Placement of Children Without Disabilities; Education and Transportation

The responsibility for providing instruction and transportation for a pupil without a disability who has a short-term or temporary physical or emotional illness or disability, as determined by the standards of the commissioner, and who is temporarily placed for care

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and treatment for that illness or disability, must be determined as provided in this section....

- (c) Before the placement of a pupil for care and treatment, the district of residence must be notified and provided an opportunity to participate in the placement decision. When an immediate emergency placement is necessary and time does not permit resident district participation in the placement decision, the district in which the pupil is temporarily placed, if different from the district of residence, must notify the district of residence of the emergency placement within 15 days of the placement. **When a nonresident district makes an emergency placement without first consulting with the resident district, the resident district has up to five business days after receiving notice of the emergency placement to request an opportunity to participate in the placement decision, which the placing district must then provide.**
- (d) When a pupil without a disability is temporarily placed for care and treatment in a day program and the pupil continues to live within the district of residence during the care and treatment, the district of residence must provide instruction and necessary transportation to and from the **care and treatment facility program** for the pupil. **The resident district may establish reasonable restrictions on transportation, except if a Minnesota court or agency orders the child placed at a day care and treatment program and the resident district receives a copy of the order, then the resident district must provide transportation to and from the program unless the court or agency orders otherwise.** Transportation shall only be provided by the **resident** district during regular operating hours of the **resident** district. The **resident** district may provide the instruction at a school within the district of residence, at the pupil's residence,

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or in the case of a placement outside of the resident district, in the district in which the day treatment program is located by paying tuition to that district. The district of placement may contract with a facility to provide instruction by teachers licensed by the state Board of Teaching....

G. *Minn. Stat. § 125A.57, subd. 2 – Assistive Technology Device.*

Subd. 2. **Assistive technology device.** “Assistive technology device” means any item, piece of equipment, ~~software~~, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of ~~children with disabilities~~ **a child with a disability. It does not mean a medical device that is surgically implanted or a replacement of such a device.**

STATE STATUTES AND RULES THAT HAVE BEEN REPEALED

A. *Minn. Stat. § 125A.05 – Method of Special Instruction*

This statute provided, in part, that “to the extent required by federal law as of July 1, 1999, special instruction and services for children with disabilities must be based on the assessment and individual education plan. The instruction and services may be provided by one or more of the following methods....”

Subsection (c) provided that the “primary responsibility for the education of a child with a disability must remain with the district of the child’s residence regardless of which method of providing special instruction and services is used. If a district other than a child’s district of residence provides special instruction and services to the child, then the district providing the special instruction and services must notify the child’s district

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of residence before the child's individual education plan is developed and must provide the district of residence an opportunity to participate in the plan's development."

B. *Minn. Rule 3525.0210, subp. 34 – Definition of "Parent"*

The state rule defining "parent" – which generally tracked the definition of the 1999 IDEA Regulations - is repealed. Consequently, the current 2006 definition of "parent" applies. The 2006 IDEA regulatory definition provides greater clarity and flexibility in identifying who may be a "parent" for special education purposes.

C. *Minn. Rule 3525.0210, subp. 43 – Definition of "Surrogate Parent"*

The state rule defining "surrogate parent" is repealed. Consequently, the current 2006 regulation governing "surrogate parent" applies. The current federal regulation provides more flexibility regarding the appointment of surrogates.

D. *Minn. Rule 3525.0400 – Least Restrictive Environment*

This rule stated, in part, that "To the maximum extent appropriate, pupils with disabilities shall be educated with children who do not have disabilities and shall attend regular classes."

E. *Minn. Rule 3525.2445 – Consultation with County Social Services*

This rule required that the district "consult the county social services office before appointing the surrogate parent when a pupil is a ward of the commission of human services."

F. *Minn. Rule 3525.4220 – Hearing Rights of Respective*

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Parties

This rule set forth the hearing rights of the parties, including the right to be represented by counsel and to receive a copy of the hearing transcript. The rule was duplicative of what already exists in federal law and Section 125A.091.

RESTRAINT AND SECLUSION: THE NEW “RESTRICTIVE PROCEDURES” LAW

125A.094 RESTRICTIVE PROCEDURES FOR CHILDREN WITH DISABILITIES.

The use of restrictive procedures for children with disabilities is governed by sections 125A.0941 and 125A.0942.

EFFECTIVE DATE: August 1, 2011.

125A.0941 - DEFINITIONS.

- (a) The following terms have the meanings given them.
- (b) “Emergency” means a situation where immediate intervention is needed to protect a child or other individual from physical injury or to prevent serious property damage.
- (c) “Physical holding” means physical intervention intended to hold a child immobile or limit a child’s movement and where body contact is the only source of physical restraint. The term physical holding does not mean physical contact that:
 - (1) helps a child respond or complete a task;
 - (2) assists a child without restricting the child’s movement;
 - (3) is needed to administer an authorized health-related service or procedure; or

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- (4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.
- (d) "Positive behavioral interventions and supports" means interventions and strategies to improve the school environment and teach children the skills to behave appropriately.
- (e) "Restrictive procedures" means the use of physical holding or seclusion in an emergency.
- (f) "Seclusion" means confining a child alone in a room from which egress is barred. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

125A.0942 - STANDARDS FOR RESTRICTIVE PROCEDURES.

Subdivision 1. Restrictive procedures plan. Schools that intend to use restrictive procedures shall maintain and make publicly accessible a restrictive procedures plan for children that includes at least the following:

- (1) the list of restrictive procedures the school intends to use;
- (2) how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee; and
- (3) a written description and documentation of the training staff completed under subdivision 5.

Subd. 2. Restrictive procedures. (a) Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification Board, a person with a master's degree in behavior analysis, other licensed education professional, paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed the training

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program under subdivision 5.

- (b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (d).
- (c) When restrictive procedures are used twice in 30 days or when a pattern emerges and restrictive procedures are not included in a child's individualized education program or behavior intervention plan, the district must hold a meeting of the individualized education plan team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education plan or behavior intervention plan as appropriate. At the meeting, the team must review any known medical or psychological limitations that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.
- (d) An individualized education plan team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

Subd. 3. Physical holding or seclusion. Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

- (1) the physical holding or seclusion must be the least

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- intrusive intervention that effectively responds to the emergency;
- (2) physical holding or seclusion must end when the threat of harm ends and the staff determines that the child can safely return to the classroom or activity;
 - (3) staff must directly observe the child while physical holding or seclusion is being used;
 - (4) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion shall document, as soon as possible after the incident concludes, the following information:
 - (i) a description of the incident that led to the physical holding or seclusion;
 - (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
 - (iii) the time the physical holding or seclusion began and the time the child was released; and
 - (iv) a brief record of the child's behavioral and physical status;
 - (5) the room used for seclusion must:
 - (i) be at least six feet by five feet;
 - (ii) be well lit, well ventilated, adequately heated, and clean;
 - (iii) have a window that allows staff to directly observe a child in seclusion;
 - (iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

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- (v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and
 - (vi) not contain objects that a child may use to injure the child or others; and
- (6) before using a room for seclusion, a school must:
- (i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and
 - (ii) register the room with the commissioner, who may view that room.

Subd. 4. Prohibitions. The following actions or procedures are prohibited:

- (1) engaging in conduct prohibited under section 121A.58;
- (2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;
- (3) totally or partially restricting a child's senses as punishment;
- (4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;
- (5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

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- (6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under section 626.556;
- (7) withholding regularly scheduled meals or water;
- (8) denying access to bathroom facilities; and
- (9) physical holding that restricts or impairs a child's ability to breathe.

Subd. 5. Training for staff. (a) To meet the requirements of subdivision 1, staff who use restrictive procedures shall complete training in the following skills and knowledge areas:

- (1) positive behavioral interventions;
- (2) communicative intent of behaviors;
- (3) relationship building;
- (4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;
- (5) de-escalation methods;
- (6) standards for using restrictive procedures;
- (7) obtaining emergency medical assistance;
- (8) the physiological and psychological impact of physical holding and seclusion;
- (9) monitoring and responding to a child's physical signs of distress when physical holding is being used; and
- (10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used.
 - (b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of training programs that satisfy the requirements of paragraph (a). The

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district shall maintain records of staff who have been trained and the organization or professional that conducted the training. The district may collaborate with children's community mental health providers to coordinate trainings.

Subd. 6. Behavior supports. School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports. Nothing in this section or section 125A.0941 precludes the use of reasonable force under sections 121A.582; 609.06, subdivision 1; and 609.379.

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